

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN TABOR,

Plaintiff,

-against-

**NOTICE OF MOTION**

11-CV-195 (FB)(CLP)

NEW YORK CITY, DETECTIVE JAMES ROPENUS,  
DETECTIVE MCLAUGHLIN, POLICE OFFICER  
SINGLETARY, ASSISTANT DISTRICT ATTORNEY  
KEISHA ESPINAL, ASSISTANT DISTRICT  
ATTORNEY LAUREN PARSONS, ASSISTANT  
DISTRICT ATTORNEY KENNETH APPLEBAUM,  
ASSISTANT DISTRICT ATTORNEY MARJORIE  
FISHER, DISTRICT ATTORNEY RICHARD BROWN,  
AND POLICE COMMISSIONER RAYMOND KELLY,  
IN THEIR INDIVIDUAL AND PROFESSIONAL  
CAPACITIES,<sup>1</sup>

Defendants.  
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**PLEASE TAKE NOTICE** that upon the annexed Local Civil Rule 56.1 Statement, dated August 20, 2012; the Declaration of Assistant Corporation Counsel Matthew J. Modafferi, dated August 20, 2012, and the exhibits annexed thereto; the accompanying Memorandum of Law; and upon all prior pleadings and proceedings had herein, defendants City of New York, Detective James Ropenus, retired Detective Danielle McLaughlin and Detective Joseph Singletary will move this Court on September 4, 2012, for summary judgment pursuant to

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<sup>1</sup> On March 13, 2012, the Honorable Frederic Block adopted Magistrate Judge Cheryl L. Pollak's Report and Recommendation dismissing defendants District Attorney Brown, Commissioner Kelly, and Assistant District Attorneys Espinal, Parson, Applebaum and Fisher. Defendants respectfully request that the dismissed defendants be removed from the caption and the caption be amended to reflect that the only remaining defendants in this action are the City of New York, Detective Ropenus, Detective McLaughlin and Detective Singletary.

Rule 56 of the Federal Rules of Civil Procedure on the grounds that there are no material issues of fact in dispute that warrant a trial, and that defendants are entitled to judgment as a matter of law, and for such other and further relief as the Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE** that opposition papers, if any, shall be served on or before September 28, 2012.

**PLEASE TAKE FURTHER NOTICE** that reply papers, if any, shall be served on or before a date to be determined by the parties.

Dated: New York, New York  
August 20, 2012

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for Defendants City of New York,  
Detective Ropenus, Detective McLaughlin and  
Detective Singletary  
100 Church Street  
New York, New York 10007  
(212) 788-1652

By: \_\_\_\_\_/s/  
Matthew J. Modafferi  
Assistant Corporation Counsel  
Special Federal Litigation Division

TO: Duncan Peterson, Esq. (By First Class Mail and ECF)  
Peterson Delle Cave, LLP  
*Attorneys for plaintiff*  
233 Broadway, Suite 1800  
New York, New York 10279

CC: Honorable Frederic Block (By Hand Delivery and ECF)  
United States District Judge  
Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

**DECLARATION OF SERVICE**

Matthew J. Modafferi declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct: On September 4, 2012, I served the annexed **NOTICE OF MOTION, DECLARATION OF MATTHEW J. MODAFFERI IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' STATEMENT OF UNDISPUTED FACTS PURSUANT TO RULE 56.1** upon plaintiff's attorney, Duncan Peterson, Esq., by depositing a copy of same, enclosed in a first class, postpaid properly addressed wrapper in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to plaintiff's attorney:

Duncan Peterson, Esq.  
Peterson Delle Cave, LLP  
*Attorneys for plaintiff*  
233 Broadway, Suite 1800  
New York, New York 10279

being the address designated by plaintiff for that purpose.

Dated: New York, New York  
September 4, 2012

/s/  
\_\_\_\_\_  
MATTHEW J. MODAFFERI  
ASSISTANT CORPORATION COUNSEL

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**NOTICE OF MOTION**

*MICHAEL A. CARDOZO*  
*Corporation Counsel of the City of New York*  
*Attorney for Defendants City of New York, Detective*  
*Ropenus, Detective McLaughlin and Detective Singletary*  
*100 Church Street*  
*New York, New York 10007*

*Assistant Corporation Counsel: Matthew J. Modafferi*  
*Tel: (212) 788-1652*  
*NYCLIS No. 2011-001813*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2012,*

*..... Esq.*

*Attorney for.....*